Appeal Decision

by [redacted] MRICS

an Appointed Person under the Community Infrastructure Levy Regulations 2010 (as Amended)

Valuation Office Agency - DVS
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Appeal Ref: 1829571

Planning Permission Reference: [redacted]

Location: [redacted]

Development: The erection of a part single storey / part two storey building [redacted].

Decision

I determine that the Community Infrastructure Levy (CIL) payable in this case should be £0 (Nil).

Reasons

1. I have considered all the submissions made by [redacted] and [redacted] (the Appellants) and [redacted] as the Collecting Authority (CA) in respect of this matter. In particular, I have considered the information and opinions presented in the following documents:-

    a. Planning Inspectorate Appeal Decision dated [redacted] granting planning permission for "*the erection of a part single-storey/part two-storey building* [redacted].
    b. The CIL Liability Notice [redacted] issued by the CA dated [redacted] with CIL Liability calculated at £[redacted]
    c. The CA's response dated [redacted] to the Appellant's request for a Regulation 113 review.
    d. The CIL Appeal Form dated [redacted] submitted by the Appellant under Regulation 114, together with documents and correspondence attached thereto.
    e. The CA's comment to the Appointed Person dated [redacted] that they "*have no further written representations to add to this case beyond the documents which have already been submitted … by the appellant as their appendices*".

Background

2. A Planning Enforcement Notice had been issued under paragraph (a) s.171A(1) of the Town and Country Planning Act 1990 (as amended by the Planning and Compensation

Act 1991) by the CA dated [redacted] on the basis that "*Without planning permission the construction of a part single storey, part two storey building*" had taken place.

3. A Planning Inspectorate Appeal Decision dated [redacted] quashed the Enforcement Notice and granted planning permission for "*the erection of a part single-storey/part two-storey building* [redacted]".

4. Condition 1 of the Planning Permission also stipulated "*The accommodation hereby approved shall not be occupied at any time other than for purposes ancillary to the residential use of the dwelling in the planning unit* [redacted]"

5. CIL Liability Notice [redacted] was issued by the CA dated [redacted] in respect of Enforcement reference [redacted] (Appeal Ref: [redacted]) calculated as follows:-

   Residential Housing – Mainland
   [redacted]m2 GIA @ £[redacted]/m2
   = £[redacted] CIL Liability

6. The CA issued a CIL Demand Notice dated [redacted] in the sum of £[redacted] on the basis that "*Development is deemed to have commenced*".

7. The Appellants requested a Regulation 113 review on [redacted].

8. The CA issued the outcome of its Regulation 113 review on [redacted]. Both parties are in agreement that the GIA of the building is below 100 m2. The CA confirmed that in their view the building is an annexe as per Regulation 42A of the CIL Regulations.

9. A Regulation 114 Appeal against the chargeable amount dated [redacted] was submitted to the VOA on the same date.

Appeal Grounds

10. The Appellants argue that this is a minor development and should be CIL exempt under Regulation 42, and therefore carries no CIL Liability.

11. To satisfy the minor development exemption under Regulation 42 the GIA of new build is required to be less than 100 m2 and the development cannot comprise one or more dwellings. The Appellants submit that the development in question satisfies both of these elements.

Consideration of the Parties' Submissions

12. The Appellants argue that the CIL chargeable amount should be nil as the development falls under the exemption for minor development under Regulation 42 of the CIL Regulations, as it has a GIA of less than 100 m2 and does not comprise a 'dwelling' as defined by the CIL Regulations. In terms of the GIA, it is the Appellants' position that the GIA of the new build element of the development is only [redacted]m2 as the existing building has a GIA of [redacted] m2.

13. The Appellants refer to Regulation 42 of the CIL Regulations, which they argue provides a complete exemption for minor development:

    "Exemption for minor development
    42.—(1) Liability to CIL does not arise in respect of a chargeable development if, on completion of that development, the gross internal area of new build on the relevant land will be less than 100 square metres.

(2) But paragraph (1) does not apply where the chargeable development will comprise one or more dwellings.
(3) In paragraph (1) "new build" means that part of the chargeable development which will comprise new buildings and enlargements to existing buildings."

14. They also cite Paragraph 048 Reference [redacted] of the Planning Policy Guidance – Community Infrastructure Levy under the sub-heading "What is a minor development exemption?":

    "Minor development, with a gross internal area of less than 100 square metres, is generally exempt from the levy. However, where minor development will result in a new dwelling (or dwellings), it will be liable for the levy although the self-build exemption may apply instead if it is built by a 'self-builder'."

15. The Appellants also refer to the CIL Regulations, Part 1, Regulation 2 that provides the following definition of 'dwelling':

    " 'dwelling' means a building or part of a building occupied or intended to be occupied as a separate dwelling;"

16. The Appellants also believe that the GIA of [redacted]m2 specified in the Liability Notice is incorrect because the existing building, which has not been demolished, is incorporated within the development. Regulation 42 provides for a definition of 'new build' which means that part of the development which will comprise new buildings and enlargements to existing buildings. The existing building has a GIA of [redacted]m2 and accordingly the new build element of the development is only [redacted]m2.

17. They contend, however, that as both parties accept that the development has a GIA of less than 100 m2, the first element of the Regulation 42 exemption is satisfied with the GIA of the new build being less than 100m2.

18. The Appellants also argue that the development does not comprise one or more dwellings, citing CIL Regulation 2 that states a 'dwelling' is "*a building or part of a building occupied or intended to be occupied as a separate dwelling*;" They argue that the development does not satisfy the definition of 'dwelling' in that it is not occupied or intended to be occupied as a separate dwelling on the basis that the development is described in the Planning Inspector's Decision Letter dated [redacted] as the "*erection of a part single-storey/part two-storey building* [redacted]" and there is no reference within the description of development that the development is to be a dwelling.

19. They also note planning permission Condition 1 which states:

    "The accommodation hereby approved shall not be occupied at any time other than for purposes ancillary to the residential use of the dwelling in the planning unit to which is attached or for purposes incidental to the enjoyment of the dwellinghouse, and shall not be independently occupied or rented as a holiday or residential let." and that this specifically restricts the occupation of the development for ancillary purposes in relation to the residential use of the dwelling in the planning unit to which it attaches, and prevents the development from being independently occupied.

20. Further, the Appellants note that paragraph 40 of the Planning Inspector's Decision Letter dated [redacted] states that the building subject to the permission "*can only be used as an extension to no* [redacted]*'s living accommodation, otherwise it could easily mean that an additional planning unit has been created*…" and that paragraph 46 states that in respect of imposing of conditions, "*one which will prohibit the building and its use being severed from the existing single domestic planning unit is both necessary and reasonable*.". They

argue it is therefore clear from the Inspector's comments in the Decision Letter that the development is not occupied or intended to be occupied as a separate dwelling.

21. The Appellants note Regulation 42A states that development is a residential annexe if it "*comprises one new dwellings*" and therefore contends that the development does not satisfy the definition of a 'dwelling' nor meet the requirements to be a 'residential annexe' for the purposes of Regulation 42A. They maintain that the development satisfies the requirements for complete exemption under Regulation 42 instead.

22. In the outcome to their Regulation 113 review the CA comment "*The CIL regulations clearly define in Regulation 42A an annexe, and that for the purposes of the CIL regulations an annexe comprises one new dwelling. Consequently, the exemption created by Regulation 42 for minor development does not apply, as it specifically states that development which will comprise one or more dwellings will not be exempt*."

23. The CA also state "*I am not convinced by the argument that a condition restricting the accommodation to purposes ancillary to the residential use of the main dwelling, prevents this building for the purposes of the CIL Regulations being considered as an annexe or by extension of the definition in Regulation 42A a new dwelling. Indeed, the Inspector states in paragraph 9 of his Decision Letter 'I can confirm that the building serves as a self-contained residential unit.' He further states in paragraph 40 that 'in this instance I am satisfied that the new outbuilding performs as an annexe…' and references the Uttlesford decision in that regard. The report together with the restrictive occupancy condition also confirms that the development has the potential to be used as a separate dwelling and, therefore, must remain ancillary to the residential use of the main dwelling, as an annexe would. Therefore, the permission granted for the development is that of a residential annexe*."

24. The CA therefore hold the view that the development for the purposes of the CIL Regulations is an annexe, which by the definition in Regulation 42A excludes this building from the exemption created by Regulation 42 and the development is therefore liable to pay CIL.

25. The CA also state they do not dispute that the development has commenced but note that an exemption claim for residential annexes under Regulation 42B must '*be received by the collecting authority before commencement of the chargeable development*' and that an exemption under Regulation 42B cannot be claimed in this instance. They acknowledge that the development was commenced prior to the CIL Charging Schedule being adopted, but state the Regulations are clear that CIL becomes chargeable on grant of permission, which occurred on [redacted] when the Inspector determine the appeal and, thereby, granted permission.

26. The CA state the view that regarding the amount of floorspace calculated to be CIL liable, Regulation 42 is not relevant as this is not a minor development. They point to Part 1 of Schedule 1 Sub-paragraph (6) to the CIL Regulations which set out the procedure for calculating the chargeable amount and states*:*

    '(i) retained parts of in-use buildings; and
    (ii) for other relevant buildings, retained parts where the intended use following completion of the chargeable development is a use that is able to be carried on lawfully and permanently without further planning permission in that part on the day before planning permission first permits the chargeable development'

27. The CA note that In-use building is defined under sub-paragraph 10 as meaning a building which:

    '(i) is a relevant building, and

(ii) contains a part that has been in lawful use for a continuous period of at least six months within the period of three years ending on the day planning permission first permits the chargeable development'

28. They note that Sub-paragraph 10 then goes onto define relevant building which means:

    'a building which is situated on the relevant land on the day planning permission first permits the chargeable development'

29. The CA argue that the development is not a relevant building, as the outbuilding (as it originally stood) was not present on the land on the day planning permission first permitted the development and did as a matter of fact and degree constitute part of the new building. This is supported by the Planning Inspector who in determining the appeal stated at paragraph 20:

    '…the unaltered building, as stood before the extensive works were carried out, constitutes significantly more than physical improvement and restoration. Instead, the new building is both materially and substantially different to that which was previously in situ.'

30. The CA state this is therefore not in accordance with point (i) in the definition of an in-use building. Furthermore, there is no six-month period within the three years preceding the permission in which the in-use building has been in continuous lawful use and the works did not have consent. As neither of the criteria contained within the definition of an in-use building are met, this is not deductible from the total CIL liable amount.

31. The CA state they measured the gross internal floor area of the annexe, and their calculations concur with the figure quoted by the Planning Inspector in their appeal decision at paragraph 19 which total an area of some [redacted]m2.

Consideration of the Decision

32. I have considered the respective arguments made by the CA and the Appellants, along with the information provided by both parties.

33. The key issue to be considered is whether the development constitutes minor development under CIL Regulations 2010 Regulation 42 (1) or is a new dwelling under Regulation 42 (2).

34. CIL Regulations 2010 Reg 42 - Exemption for Minor Development states:

    (1) Liability to CIL does not arise in respect of a development if, on completion of that development, the gross internal area of new build on the relevant land will be less than 100 square metres.
    (2) But paragraph (1) does not apply where the development will comprise one or more dwellings
    (3) In paragraph (1) "new build" means that part of the development which will comprise new buildings and enlargements to existing buildings

35. The parties do not appear to dispute that the total area of the development is below 100 m2.

36. There would be no minor development exemption under Regulation 42 (1) if the development comprises a new dwelling, despite its GIA being under 100 m2. It must therefore be decided whether the permitted development is a dwelling or not.

37. The development permitted is for "*the erection of a part single-storey/part two-storey building shown in the approximate position on the attached plan*…". It would appear this is not permission for a separate dwelling, even though it appears from the plans that the development has the physical characteristics of a separate dwelling and could be used as such.

38. There is no provision for deeming accommodation to be an annexe or a dwelling within the CIL Regulations 2010 (as amended). Regulation 42(2) only nullifies Regulation 42(1) of the minor development exemption where the development will comprise one or more dwellings.

39. The definition of dwelling for CIL is "*a building or part of a building occupied or intended to be occupied as a separate dwelling*".

40. The Appellants' contention is that, under the CIL Regulations, to be a dwelling the development would have to be occupied as a separate dwelling, but this accommodation will not be occupied as a separate dwelling due to the specific restriction imposed by planning permission condition 1, which states "*The accommodation hereby approved shall not be occupied at any time other than for purposes ancillary to the residential use of the dwelling in the planning unit to which is attached or for purposes incidental to the enjoyment of the dwellinghouse, and shall not be independently occupied or rented as a holiday or residential let.*"

41. Planning permission condition 1 does not appear to prevent use of the development as a dwelling, but it does restrict such use to purposes ancillary to the residential use of the main dwelling only.

42. Since the development cannot be used or occupied as a separate dwelling due to the planning condition, I therefore determine that the development does not comprise "*one or more dwellings*" and as such is a minor development which qualifies for exemption under Regulation 42.

Decision

43. On the basis of the evidence before me and having considered all the information submitted in respect of this matter, I determine that the Community Infrastructure Levy (CIL) payable in this case should be £0 (Nil).

[redacted] DipSurv DipCon MRICS
RICS Registered Valuer
Valuation Office Agency
14 September 2023